Supreme Court, U.S.
FILED
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No. 04 261

In The

Supreme Court of the United States

GERARDO ROMERO-MORALES,

Petitioner,

vs.

PEOPLE OF THE CITY AND COUNTY OF DENVER AND OF THE STATE OF COLORADO,

Respondents.

On Petition For Writ Of Certiorari To The Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Simple facts raise the questions sought to be considered.

On January 8, 2002, Gerardo Romero-Morales was stopped in a truck by police in Denver, Colorado in daylight hours. Gerardo Romero-Morales was seized because in daylight hours, he had his front headlights on, illuminated in red. Gerardo Romero-Morales was stopped for allegedly violating Denver Ordinance Section 54-70, that regulates "Lighting Equipment" of vehicles, but Denver Ordinance Section 54-70 caused there to be no basis for "seizing" Gerardo Romero-Morales and that charge was withdrawn by the People. After withdrawing any charge under Ordinance Section 54-70, the respondents brought a "cycle equipment" statutory charge against Gerardo Romero-Morales under C.R.S. 42-4-220(3)(b).

When Gerardo Romero-Morales was stopped incorrectly for a non-existent Ordinance Section 54-70 violation, Gerardo Romero-Morales gave a false identity and while doing so, was caught lying to a police officer and cuffed in the patrol car. No "Miranda" warning was then given, nor ever and thereafter, further incriminating information was obtained from Gerardo Romero-Morales, despite no "Miranda" warning.

The questions presented are:

1. Whether the defendant was lawfully stopped?
2. Whether defendant was tried consistent with Due Process?

QUESTIONS PRESENTED – Continued

3. Whether "Miranda" was violated because there was improper use of evidence after Gerardo Romero-Morales was caught lying as to his identity and had been cuffed in the patrol car, he was never "Mirandized" and thereafter he admitted he was Gerardo Romero-Morales, a driver with a many times revoked license?

LISTING OF PARTIES TO THE PROCEEDINGS

The parties in the proceedings in the lower courts appear here.

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PETITION FOR WRIT OF CERTIORARI

Gerardo Romero-Morales respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court for the State of Colorado and its lower courts.

OPINIONS BELOW

The Denver Municipal/County Court[1] said in part for its opinion as follows:

> . . . defendant, giving two different dates of birth and a wrong name, prior to giving his real name, the court finds the defendant guilty of false information. As to having a red light visible from the front of the vehicle, that is in violation of the Colorado statute. The Court finds the defendant guilty of the equipment violation and insofar as driving under revocation, notice having been given, signed by the defendant, the Court's satisfied that he had knowledge and the Court finds the defendant guilty of driving under revocation.

The findings of the court are reproduced at Appendix A-1, by the trial court transcript face sheet and page 42.

The State District Court Judge to whom the matter was appealed from the Denver Municipal/County Court, in upholding the County Court conviction, liberally construed C.R.S. 42-4-220 entitled:

[1] Denver is a Home Rule City and the Denver Municipal Court Judges are concurrently State County Court Judges, in that Municipality, capable of trying State misdemeanors.

> **Motorized bicycles –**
> **Motor driven**
> **Cycles – lighting**
> **Equipment-department control – use and operation**

to apply to defendant's truck.

> The specific language from subsection 3(b) is:
>
> No person shall equip . . . any vehicle or **equipment** upon any highway with any . . . device thereon **capable** of displaying a red . . . light visible from **directly in front of the center** thereof. (Emphasis supplied).

Consequently, a front and center red or blue reflector on almost any vehicle on a highway, not being illuminated or in the sun can be the basis for a charge of violating C.R.S. 42-4-220(3)(b), if the statute is construed to apply to more than cycles.

The language of the District Court, taken from its order in upholding the conviction:

> Defendant was charged and convicted of 1) providing false information; 2) driving under the restraint in violation of 42-1-138(d); and 3) operating a motor vehicle in violation of section 42-4-220(3)(b). (Appendix A-2)

This is despite that:

> The defendant was originally charged and stopped because of an alleged violation of Section 54-70, a Denver Municipal ordinance, which was dismissed as not covering the defendant's conduct. (Appendix A-3, transcript, October 10, 2002 by its face sheet and pages nine [9] and ten [10]).

Appendix A-4 is the Order from the Supreme Court declining the Application for Certiorari to the Colorado Supreme Court.

Appendix A-5 reflects the sentencing of the defendant on January 30, 2003, by its face sheet and pages seven (7) and eight (8).

JURISDICTION

The Order of the Colorado Supreme Court was entered June 1, 2004.

The jurisdiction of this Court is respectfully invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS

Constitution of the United States: Amendment I, Amendment IV, Seizures, Amendment V, Due Process Clause and Amendment XIV, Due Process Clause.

STATUTORY PROVISIONS

Section 42-4-220 – **Motorized Bicycles – Motor Driven Cycles – Lighting Equipment – Department Control – Use and Operation.**

This statute is reproduced in its entirety at Appendix B.

Denver Ordinance Section 54-70 is so reproduced as Appendix C.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On June 8, 2002, the defendant, Gerardo Romero-Morales was stopped at East Colfax Avenue and North (sic) Ulster Street, according to Denver Summons Number GD-510604 for an alleged violation of Municipal Ordinance Section 54-70, which he did not violate. Never was the defendant "Mirandized," particularly after being twice caught giving "False Information" and having been cuffed.

Specifically, defendant was stopped "**solely**" because of "free speech," red head lights on his truck:

> I observed the defendant's vehicle was a red Chevy pickup with red lights illuminated to the front of the vehicle. (Transcript for December 16, 2002, by its face sheet, page seven [7], lines 23-25 and page twenty-four [24], lines 19-21).

Defendant was stopped "**solely**" because of the police officer's admittedly erroneous belief that the defendant had violated Denver Ordinance Section 54-70.

There was no evidence that defendant was doing anything but exercising his right of free speech.

The police officer agreed that defendant was not the occupant of a "Motorized Bike." (Transcript for December 16, 2002, P.25, Ls.1-6).

The stop, "**solely**" for an alleged violation of Denver Ordinance Section 54-70, was wrong. (Transcript for December 16, 2002, P.25, Ls.11-20).

The charge ultimately made against defendant on October 16, 2002 is found at the "Cycle Equipment" Statute, C.R.S. 42-4-220(3)(b) which provides:

> No person shall equip, drive, or move any vehicle . . . upon any highway with any . . . device thereon capable of displaying a red . . . light visible from directly in front of the **center** thereof. (Emphasis Supplied).

The defendant was so charged with a statute that factually did not apply and legally it could only apply to a "**cycle**" with a **centered** front light.

After the defendant had given a false identity and was caught lying and thereafter cuffed in the patrol car, no "Miranda" warning was even given to him before further, renewed questioning.

On January 29, 2003, a day before sentencing, the defendant, in a Request for Reconsideration, specifically called the Trial Court's attention to the fact that defendant "had no lights of color centered" and argued that there was no charge of violating C.R.S. 42-2-138(1)(d).

At sentencing, defendant received a 300-day jail sentence for his driving with a previously revoked license and his significant history of other prior driving offenses.

On January 31, 2003, the Honorable Trial Court set strict Appeal Bond conditions.

The appeal to Denver District Court was denied.

The Colorado Supreme Court refused a Writ of Certiorari on June 1, 2004.

Because the defendant had illuminating red lights on his truck, he was seized.

REASONS FOR GRANTING THE PETITION

I. INTRODUCTION

There is a 300-day jail sentence for a local Hispanic businessman who has been extremely successful, except for his driving.

II. THE DECISIONS BELOW ARE UNCONSTITUTIONAL

Petitioner was stopped because of a perceived violation of Denver Municipal Ordinance Section 54-70, Appendix A-6, the original case sheet.

The respondents substituted C.R.S. 42-4-220(3)(b) for Ordinance Section 54-70.

No Colorado Court considered *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769 (1996). Its simple holding is "Detention of a motorist is reasonable where probable cause exists to believe that a traffic violation has occurred."

None of the lower courts ever mentioned in convicting, nor in the affirming of the conviction nor in saying we will not review this matter, the following case authorities:

> *Muscarello v. United States*, 524 U.S. 125, 138, 118 S.Ct. 1911, 141 L.Ed.2d 111 (1998) ("[t]he

> rule of lenity applies only if, after seeing everything from which aid can be derived, . . . we can make no more than a guess as to what Congress intended") (internal quotations omitted);
>
> *People v. Thoro Products,* 70 P.3d 1188, 1197 and 1198 (Colo. 2003);
>
> *Mortgage Investments Corporation v. Battle Mountain Corporation*, 70 P.3d 1176 (Colo. 2003) says, a Court may consider the title of a statute as an aid in determining legislative intent; and
>
> *U.S. v. Jackson*, 8 F.Supp.2d 1239 (Dist. C. Colo. 1998), says, uncertainty in a Criminal Statute must be found in favor of the defendant.

Respectfully, no proper analysis has dealt with what the statutory subsection says. The District Court Judge liberally construed the following words: "[R]ed . . . light visible from directly in front of the center thereof." What does that phrase mean? Obviously it means a cycle vehicle, but because of all of the confusion, the title to the statute should be examined.

This criminal statute, if properly read and construed, did not allow the Denver Police Officer to stop the defendant upon the basis of the lighting of defendant's vehicle. Respectfully, if the stop was illegal, all of the charges must fall.

The statements of the Denver District Court that are unconstitutionally erroneous are as follows:

> On June 8, 2002, Defendant was stopped by police because his pickup truck was equipped with front red lights in violation of §42-4-220(3)(b).

(Page One [1] of Order). The Honorable District Court Judge's statements are incorrect. Further, the defendant was not initially so charged, nor was he initially charged with "driving under the restraint in violation of 42-1-138(d)." Respectfully, the Denver District Court Judge incorrectly said:

> Defendant misconstrues the language of the statute. By its clear and unambiguous terms, it prohibits any red or blue lamp that is visible from directly in front of the center of the vehicle, regardless of whether the offending lamp happens to be on the center line of the vehicle.

(Page Three [3] of Order). The Denver District Court Judge minimizes the "Miranda" violations as to petitioner's crucial name giving. Also, the Denver District Court Judge erred when he represents:

> Assuming, without deciding, that Defendant was in custody for *Miranda* purposes when he gave the officer his real name and date of birth, the cases are clear that this kind of preliminary information-gathering, normally attendant to arrest and custody, is not "interrogation." *See, e.g., People v. Anderson,* 837 P.2d 293 (Colo. App. 1992) (*citing Rhode Island v. Innis*, 446 U.S. 291 (1980).
>
> Here, the Defendant does not argue, nor is there anything in the record which would indicate, that the requests for his name and date of birth were anything more than routine inquiries during a traffic stop.

The State law on the topic is *Frazier v. People*, 90 P.3d 807 (Colo. 2004) at headnote 5, which discusses the rule of "lenity" and requires courts to resolve ambiguity in a penal

code in favor of a defendant's liberty interests, citing *Faulkner v. District Court*, 826 P.2d 1277 (Colo. 1992).

The problem with what the Trial Court did and the District Court did is that the intent of the legislature to regulate cycles and only cycles was ignored. Other Colorado decisions applying strict rules of construction to penal statutes are found in *People v. Mooney*, 290 P.2d 271 (Colo. 1930); *Polly v. People*, 108 P.2d 220 (Colo. 1940); and *People v. Russell*, 703 P.2d 620 (Colo. 1985).

None of the convictions of any of the charges stand if there was not a basis for stopping the defendant and there was none. Defendant was not on a "cycle."

Additionally, at a time when the defendant had already confessed to using a fictitious identity, before questioning the defendant further, the defendant had to be "Mirandized." How and why that was not done and how it was upheld is respectfully something that should be a matter of concern for this Court in its decisions. Please see *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966).

The Due Process denials include the lower courts' lack of analytical approach to the stopping of Gerardo Romero-Morales because nothing was chargeable.

Respectfully, the claimed applicability of the cycle equipment statutes is at best incorrect. The failure to apply the requirements of *Miranda* is disturbing.

Every defendant is entitled to have a fair, balanced analysis of whether an arrest was proper. Here, it was not and all convictions must fall.

CONCLUSION

The petition for a Writ of Certiorari should respectfully be granted.

Respectfully submitted,

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No. _____

In The
Supreme Court of the United States

GERARDO ROMERO-MORALES,

Petitioner,

vs.

PEOPLE OF THE CITY AND COUNTY OF DENVER AND OF THE STATE OF COLORADO,

Respondent.

On Petition for Writ of Certiorari to the Colorado Supreme Court

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APPENDIX A-1

SUPREME COURT, STATE OF COLORADO TWO EAST 14TH AVENUE DENVER, COLORADO 80203 CERTIORARI TO DISTRICT COURT, CITY & COUNTY OF DENVER, 03CV694 COUNTY COURT, CITY & COUNTY OF DENVER, 02GS510604	CASE NO. 04SC116
Petitioner: GERARDO ROMERO-MORALES, v. **Respondent:** THE CITY AND COUNTY OF DENVER and THE PEOPLE OF THE STATE OF COLORADO.	
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the District Court City & County of Denver, and after review of the record, briefs, and the judgment of said district court,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, JUNE 01, 2004. [SEAL]

Copies mailed via the State's Mail Services Division on 06/01/04. MLK

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Honorable Morris B. Hoffman
District Court Judge

Honorable Robert B. Crew, Jr.
County Court Judge

Honorable Aleene Ortiz-White
County Court Judge

APPENDIX A-2

COUNTY COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 02GS510604 Courtroom 117M

TRANSCRIBER'S TRANSCRIPT

THE PEOPLE OF THE STATE OF COLORADO

Plaintiff

v.

GERARDO ROMERO-MORALES

Defendant

The trial in this matter commenced on December 16, 2002 before THE HONORABLE ROBERT B. CREW, JR., Magistrate of the County Court.

FOR THE PLAINTIFF: CHRISTOPHER LUJAN, ESQ.

FOR THE DEFENDANT: JACK KINTZELE, ESQ.

Spanish Interpreter: Patricia Sprock

* * *

[42] knowledge, Your Honor. So I'd ask that you find him guilty on all three counts and ask that you find him guilty on driving under revocation for an alcohol-related reason. Thank you.

THE COURT: Thank you, and Mr. Kintzele.

CLOSING ARGUMENT

BY MR. KINTZELE: Judge, we would restate all of our previous statements and restate our previous motions. We have no further argument.

THE COURT: Thank you. Mr. Lujan, a reply?

MR. LUJAN: No reply, Your Honor, thank you.

FINDINGS AND RULING OF THE COURT

THE COURT: Based upon the testimony from Officer Smith, Defendant giving two different dates of birth and a wrong name prior to giving his real name, the Court finds the Defendant guilty of false information. As to having a red light visible from the front of the vehicle, that is in violation of the Colorado Statute. The Court finds the Defendant guilty of the equipment violation and insofar as driving under revocation, notice having been given, signed by the Defendant, the Court's satisfied that he had knowledge and the Court finds the Defendant guilty of driving under revocation. And the record also relates to it being an alcohol-related offense, Mr. Lujan?

* * *

APPENDIX A-3

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202	
PEOPLE OF THE STATE OF COLORADO, The City and County of Denver Plaintiff, v. Gerardo Romero-Morales, Defendant.	Case No. 2003 CV 694 COURTROOM 13
ORDER	

This county court criminal case is before me pursuant to Crim. P. 37. For the reasons articulated below, the judgment of conviction is AFFIRMED.

I. INTRODUCTION

On June 8, 2002, Defendant was stopped by police because his pickup truck was equipped with front red lights in violation of §42-4-220(3)(b). Defendant could not produce a driver's license or any valid form of identification. The officer requested Defendant's name, date of birth and home address. Defendant answered that his name was "Mario Romero" and his date of birth was July 17, 1972. The officer entered the information provided by Defendant in a query on his mobile computer, and the

results indicated that there was no record of any such person. The officer again asked Defendant for his name and date of birth. Defendant again said his name was "Mario Romero," but this time gave his date of birth as June 6, 1973. Another computer query revealed that there was no record of any such person.

The officer returned to Defendant and asked him to step from the vehicle, and Defendant complied. At that point the officer placed Defendant in handcuffs. After a third query, Defendant stated his real name, Gerardo Romero-Morales, and real date of birth, June 6, 1974, both of which the officer confirmed by computer. The confirmation also indicated that Defendant's driver's license was under revocation, and at that point the officer placed Defendant in the back seat of the patrol car. Defendant was charged and convicted of: 1) providing false information; 2) driving under restraint in violation of §42-2-138(d); and 3) operating a vehicle in violation of §42-4-220(3)(b). Defendant's appeal is limited to his convictions for violating §42-2-138(d) and §42-2-220(3)(b).

II. ISSUES ON APPEAL

Defendant raises four issues on appeal: 1) whether there was any evidence that Defendant's truck was equipped with a red light visible in front of the truck's center in violation of §42-4-220(3)(b); 2) whether §42-4-220(3)(b) applies to motor vehicles; 3) whether Defendant's un-*Mirandized* statement was properly admitted into evidence; and 4) whether Defendant was ever actually charged with violating §42-2-138(d). I reject each of these arguments.

III. VIOLATION OF §42-4-220(3)(b)

Defendant was convicted of violating §42-4-220(3)(b), which provides that "[n]o person shall equip, drive, or move any vehicle or equipment upon any highway with any lamp or device thereon capable of displaying a red or blue light *visible from directly in front of the center thereof* [emphasis added]." Defendant concedes that his truck was equipped with a red light, but argues that the prosecution did not prove that the light was in the center of the vehicle. (Def.'s Br. at 9.) Defendant misconstrues the language of the statute. By its clear and unambiguous terms, it prohibits any red or blue lamp that is visible from directly in front of the center of the vehicle, regardless of whether the offending lamp happens to be on the center line of the vehicle.

The officer testified that he "observed the Defendant's vehicle was a red Chevy pickup with red lights illuminated to the front of the vehicle." (Dec. 16, 2002 Tr. at 42.) That finding, based as it was on competent evidence is now binding on review. *People v. Dover*, 790 P.2d 834 (Colo. 1990).

IV. WHETHER §42-4-220(3)(b) APPLIES TO A "MOTOR VEHICLE"

Section 42-4-220 is entitled "Motorized bicycles – motor driven cycles – lighting equipment – department control – use and operation." Defendant argues that the county court erred when it held that this statute applied to motor vehicles such as Defendant's truck. I disagree.

Although a court may consider the title of a statute as an aid in construing legislative intent when the language in the body of the statute is unambiguous, an imprecise title does not trump clear and unambiguous language in the body of the statute. *Martinez v. Continental Enter.*, 730

P.2d 308 (Colo. 1986). Here, the statute expressly regulates "[a]ny lighted lamp or illuminating device upon *any vehicle or equipment*. . . ." §42-4-220(3)(b) (emphasis added).

Defendant's truck satisfies the definition of a "motor vehicle" because it is a "self-propelled vehicle which is designed primarily for travel on public highways and which is generally and commonly used to transport persons or property over the public highways." §42-1-102(58). Therefore, because §42-4-220(3)(b) by its clear and unambiguous terms applies to "any vehicle," and because Defendant's truck is a "motor vehicle" as defined by §42-1-102(58), the county court did not err when it found that §42-4-220(3)(b).

V. WHETHER DEFENDANT'S UN-*MIRANDIZED* STATEMENT WAS PROPERLY ADMITTED INTO EVIDENCE

Defendant contends that the trial court erred in allowing the officer to testify about Defendant's admission of his real name and address because that admission was not preceded by a *Miranda* advisement. I disagree. *Miranda* warnings are required only if: 1) the person making the statement was in custody at the time; and 2) the statement was the product of police interrogation. *People v. Hamilton*, 831 P.2d 1326 (Colo. 1992).

Assuming, without deciding, that Defendant was in custody for *Miranda* purposes when he gave the officer his real name and date of birth, the cases are clear that this kind of preliminary information-gathering, normally attendant to arrest and custody, is not "interrogation." *See, e.g., People v. Anderson*, 837 P.2d 293 (Colo. App. 1992) (*citing Rhode Island v. Innis*, 446 U.S. 291 (1980).

Here, Defendant does not argue, nor is there anything in the record which would indicate, that the requests for his name and date of birth were anything more than routine inquiries during a traffic stop. As such, these questions did not rise to the level of custodial interrogation, and thus were properly admitted into evidence by the court.

VI. WHETHER DEFENDANT WAS CHARGED WITH VIOLATING §42-2-138(d)

Defendant conclusorily asserts that he was never charged with driving under restraint and that the motion to add that charge was never granted. On the contrary, the original summons and complaint in this case included in the category of "other violations" the charge of "driving a motor vehicle while license under restraint." This was sufficient to put Defendant on notice that he was facing a charge of "driving under constraint," and of course this charge was tried without any procedural objections by Defendant.

VII. CONCLUSION

For the foregoing reasons, the county court's judgment is AFFIRMED.

DONE THIS 6th DAY OF February, 2004.

BY THE COURT:

/s/ Morris B. Hoffman
Morris B. Hoffman
District Court Judge

cc: C. Lujan (Denver City Attorney)
J. Kintzele (ATD)
Hon. B. Campbell, Denver County Court

APPENDIX A-4

COUNTY COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 02GS510604 Courtroom 117M

TRANSCRIBER'S TRANSCRIPT

THE PEOPLE OF THE STATE OF COLORADO

Plaintiff

v.

GERARDO ROMERO-MORALES

Defendant

The pre-trial motions hearing in this matter commenced on October 16, 2002 before THE HONORABLE ROBERT B. CREW, JR., Judge of the County Court.

FOR THE PLAINTIFF: CHRISTOPHER LUGAN, ESQ.

FOR THE DEFENDANT: JACK KINTZELE, ESQ.

* * *

[9] MR. KINTZELE: May I see it?

THE COURT: Yes, you may.

MR. LUJAN: Your Honor, also for the record, I've just tendered to counsel a copy of his – the Defendant's certified driving record. I'm doing that now so I can save the City some costs in having to do it through the mail.

THE COURT: Okay, let me give counsel a moment to review this and then I'll come back to this.

MR. KINTZELE: Judge, it's fine. You can review this in lieu of the officer's testimony.

(WHEREUPON, Pause in proceedings. Court considers other cases.)

THE COURT: And Mr. Kintzele, back to you in Mr. Romero-Morales.

MR. LUGAN: Your Honor, I've provided counsel with a copy of the police officer's report.

MR. KINTZELE: And I have agreed that the Court can utilize that in connection with our motion.

THE COURT: What does 54-70 say which relates to red and blue lights?

MR. LUJAN: Actually, your Honor, I have a preliminary motion for that.

THE COURT: Mr. Lujan.

MR. LUJAN: Your Honor, the City would be moving to [10] dismiss Count 1, the driving violation 54-70.

(Indistinct) 54-70, 54-70 doesn't cover the Defendant's conduct. The City would be moving to add a Count 4, Driving With Illegal Equipment, § 42-4-223(b)

THE COURT: Stop for a minute, please. You're making a motion to add a Count 4, which is. . . .

MR. LUJAN: Which is Driving With Illegal Equipment, § 42-4-223(b).

THE COURT: § 42-4-2. . . .

MR. LUJAN: 220, subsection (3)(b). If I may approach, Your Honor.

THE COURT: You have that memorized, Mr. Kintzele?

MR. KINTZELE: Judge, I haven't seen it; I don't know about it; and what it does to me, it makes me unprepared to argue our motion in limine and/or to suppress because apparently, the basis for the stop – the alleged basis for the stop is now changed.

THE COURT: "No person shall equip, drive or move any vehicle or equipment upon any highway with any lamp or devise thereon capable of displaying a red or blue light visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which such lights, visible from the front, are expressly authorized or required by this article." That's what he's adding.

* * *

APPENDIX A-5

COUNTY COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 02GS510604 Courtroom 117M

TRANSCRIBER'S TRANSCRIPT

THE PEOPLE OF THE STATE OF COLORADO

Plaintiff

v.

GERARDO ROMERO-MORALES

Defendant

The sentencing hearing in this matter commenced on January 30, 2003 before THE HONORABLE ALEENE ORTIZ-WHITE, Judge of the County Court.

FOR THE PLAINTIFF: CHRISTOPHER LUJAN, ESQ.

FOR THE DEFENDANT: JACK KINTZELE, ESQ.

* * *

[7] MR. ROMERO-MORALES: He said he apologizes for driving under restraint and that he's learned his lesson and he's not driving anymore. He said if he would get another chance that he – this would never happen again.

THE COURT: Alright. I've considered the probation report and the record and this is not a serious crime to have the light violation, but it's a serious offense

to drive after your record, for revocation after an alcohol offense, and actually, looking at the record, it probably would justify the 90 day minimum for prior conviction after an alcohol revocation. I counted six prior driving under the influence or driving under restraint charges. And although no one has been hurt at this time, you should not be driving on the road at all and you've had many opportunities to make those changes and arrangements in terms of getting someone else to drive you or some other type of transportation. It's difficult, it's an imposition, but it's what the law requires so that other people are not at risk. If you were in an accident, you would have no insurance, anybody who was injured in your car or the other car wouldn't have a remedy. So sentence will be imposed, 300 days. I'll note work release investigation is up to the sheriff to determine whether or not you qualify.

MR. KINTZELE: Judge, would Your Honor set the amount [8] of the appeal bond, please?

THE COURT: Did you file a notice of appeal?

MR. KINZELE: We will after sentencing.

THE COURT: Okay. You will be remanded to post that bond. Any comment on the bond amount?

MR. LUJAN: No, Your Honor.

THE COURT: Alright, the bond will be set at $10,000.00. Defendant will be remanded either for the posting of the bond or the 300 day sentence.

MR. KINTZELE: Judge, may we have a stay for one day? If he hasn't filed the bond by tomorrow morning, he'll be in this Court.

THE COURT: I normally would grant that, but this is a trial that took place scheduled for October and then continued to December and then continued again for sentencing, so no, the Defendant will be remanded.

MR. LUJAN: Thank you.

THE COURT: Yes, probation's denied.

(WHEREUPON, hearing concludes. Court calls next case.)

* * *

Appendix A-6

The People of the State of Colorado
and
of the City and County of Denver
vs.
Defendant(s):

M

02GS510604

FALSE

Defendant: ROMERO-MORALES, GERARDO

DOB: 08/06/74

Offense Date: 6/8/02

38-40 - FALSE INFORMATION

54-70 - NO BRAKE TRAILER TURN SIGNAL

42-2-138 - DRIVING UNDER RESTRAINT

ATTORNEY Jack Kintzele

PHONE NO.

ADDRESS

REGISTRATION NO. 1842

JURY FEE DEPOSIT/WAIVED

DATE 6/20/02 RECEIPT # 2330139 $ 25.00

BONDING INFORMATION

DATE 6-18-02

BOND # 08364 $ 100.00

SURETY SAME TYPE CASH

DATE 1-30-03

BOND # 11350 $ 10,000.00

SURETY same TYPE Cash

DATE

BOND # $

SURETY TYPE

BOND FORFEITURE PAID

DATE	BOND #	RECEIPT #	AMOUNT

INTERPRETER NAME:

INTERPRETER NEEDED: ____LANGUAGE:

MISC.

DATE	PROCEEDINGS
7-29-02	Disp 122C-13:30 Vacated
8-19-02	1:30pm Disp 122C RB
	NG-
	Motions Hearing MM
	Jury Trial 8-19-02
10-16-02	Jury Trial 8:00AM & Mtn Hrg
10.16.02	Dism mot of CA Count 2 Dism CA
	may CA to add Count 4 Driving with
	illegal equip. 42-4-220(3b)
	Count 4 in mot D
	Speedy Trial waived 12-16-02 @ 8:00
	Speedy Trial Under Rule 48(b) Waived
	Defendant

CCIS Filing Systems MALVERN, OH 44644 MADE IN

ORDERS OF COURT Cont'd:

DATE	
12.16-02	Trial to Court Guilty all Counts 1, 3, 4 1-30-03 @ 10:30
JAN 3 0 2003	ATD accepts sister for interp. 1) MTN Reconsideration - denied all grounds 2) SENT PBN DENIED 300 DAYS JAIL BD 10,000 pending appeal once N/A Appeal docketed;
01/31/03	Appeal Board Court Ordered PBN SUP. See WIORD ACH

UPS COMPLETED
DATE_____ HOURS ____

WORK PROGRAM COMPLETED
DATE_____ HOURS ____

RESTITUTION PAID
DATE_____ AMOUNT ____
DATE_____ AMOUNT ____
DATE_____ AMOUNT ____
DATE_____ AMOUNT ____
DATE_____ AMOUNT ____
DATE_____ AMOUNT ____

PAYMENTS MADE

DATE	RECEIPT #	AMOUN

85608

APPENDIX B

§ 42-4-220. Motorized bicycles – motor-driven cycles – lighting equipment – department control – use and operation

(1)(a) Every motorized bicycle when in use at the times specified in section 42-4-204 shall be equipped with a lamp on the front, which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear, of a type approved by the department, which shall be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

(b) No person shall operate a motorized bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet; except that a motorized bicycle shall not be equipped with nor shall any person use upon a motorized bicycle a siren or whistle.

(c) Every motorized bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(2) The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(a) Every said head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one

hundred feet when the motor-driven cycle is operated at any speed less than twenty-five miles per hour, and at a distance of not less than two hundred feet when the motor-driven cycle is operated at a speed of twenty-five miles or more per hour, and at a distance of not less than three hundred feet when the motor-driven cycle is operated at a speed of thirty-five or more miles per hour.

(b) In the event the motor-driven cycle is equipped with a multiple-beam head lamp or head lamps, the upper beam shall meet the minimum requirements set forth in paragraph (a) of this subsection (2) and shall not exceed the limitations set forth in section 42-4-216(1)(a), and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in section 42-4-216(1)(b).

(c) In the event the motor-driven cycle is equipped with a single-beam lamp, said lamp shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(3)(a) Any lighted lamp or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the high-intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person shall equip, drive, or move any vehicle or equipment upon any highway with any lamp or device

thereon capable of displaying a red or blue light visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which such lights visible from the front are expressly authorized or required by this article.

(c) This subsection (3) shall not be construed to prohibit the use on any vehicle of simultaneously flashing hazard warning lights as provided by section 42-4-215(7).

(4) No person shall have for sale, sell, or offer for sale, for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer or for use upon any such vehicle, any head lamp, auxiliary or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required under this article, or parts of any of the foregoing which tend to change the original design or performance thereof, unless of a type which has been approved by the department.

(5) No person shall have for sale, sell, or offer for sale, for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, any lamp or device mentioned in this section which has been approved by the department unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

(6) No person shall use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless said lamps are mounted, adjusted, and aimed in accordance with instructions of the department.

(7) The department is authorized to approve or disapprove lighting standards and specifications for the approval of such lighting devices and their installation,

adjustment, and aiming and their adjustment when in use on motor vehicles.

(8) The department is required to approve or disapprove any lighting device, of a type on which approval is specifically required in this article, within a reasonable time after such device has been submitted.

(9) The department is authorized to provide the procedure which shall be followed when any device is submitted for approval.

(10) The department upon approving any such lamp or device shall issue to the applicant a certificate of approval, together with any instructions determined by the department to be reasonably necessary.

(11) The department shall provide lists of all lamps and devices by name and type which have been approved by it.

(12) When the department has reason to believe that an approved device as being sold commercially does not comply with the requirements of this article, the executive director of the department or the director's designated representatives may, after giving thirty days' previous notice to the person holding the certificate of approval for such device in the state, conduct a hearing upon the question of compliance of said approved device. After said hearing, said executive director shall determine whether said approved device meets the requirements of this article. If said device does not meet the requirements of this article, the director shall give notice to the person holding the certificate of approval for such device in this state.

(13) If, at the expiration of ninety days after such notice, the person holding the certificate of approval for such device has failed to establish to the satisfaction of the executive director of the department that said approved device as thereafter to be sold meets the requirements of this article, said executive director shall suspend or revoke the approval issued therefor and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this article, until or unless such device, at the sole expense of the applicant, shall be resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this article. The department may, at the time of the retest, purchase in the open market and submit to the testing agency one or more sets of such approved devices, and, if such device upon such retest fails to meet the requirements of this article, the department may refuse to renew the certificate of approval of such device.

(14) Any person who violates any provision of this section commits a class B traffic infraction.

APPENDIX C

Denver Ordinance
Sec. 54-70. Lighting equipment.

(a) *When lighted lamps are required.*

(1) Every **vehicle** upon a roadway within this city, between sunset and sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and **vehicles** on the highway are not clearly discernible at a distance of one thousand (1,000) feet ahead, shall display lighted lamps and illuminating devices as required by this section for different classes of **vehicles**, subject to exceptions with respect to parked **vehicles**.

(2) Whenever a requirement is declared by this section as to distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, such provisions shall apply during the times stated in subsection (a)(1) of this section in respect to a **vehicle** without load when upon a straight, level, unlighted highway under normal atmospheric conditions, unless a different time or condition is expressly stated.

(3) Whenever a requirement is declared by this section as to the mounted height of lamps or devices, it shall mean from the center of such lamp or device to the level ground upon which the **vehicle** stands when such **vehicle** is without a load.

(b) *Head lamps on motor **vehicles**.*

(1) Every motor **vehicle**, other than a motorcycle or motor-driven cycle, shall be equipped

with at least two (2) head lamps with at least (1) on each side of the front of the motor **vehicle**, which head lamps shall comply with the requirements and limitations set forth in this article.

(2) Every motorcycle and every motor-driven cycle, shall be equipped with at least one (1) and not more than two (2) head lamps which shall comply with the requirements and limitations of this article where applicable thereto.

(3) Every head lamp upon every motor **vehicle**, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four (54) inches nor less than twenty-four (24) inches, to be measured as set forth in subsection (a)(3).

(c) *Multiple-beam road lights.*

(1) Except as provided in this article, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor **vehicles**, other than motorcycles or motor-driven cycles, shall be so arranged that the driver may select at will between distributions of light projected to different elevations, and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

a. There shall be an uppermost distribution of light or composite beam so aimed and of such intensity as to reveal persons and **vehicles** at a distance of at least three hundred fifty (350) feet ahead for all conditions of loading.

b. There shall be a lowermost distribution of light or composite beam so aimed and of sufficient intensity to reveal persons and **vehicles** at a distance of at least one hundred (100) feet ahead; and on a straight level road under any condition of loading, none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(2) Every new motor **vehicle**, other than a motorcycle or motor-driven cycle, registered in this state after July 1, 1955, which has multiple-beam road-lighting **equipment** shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use and shall not otherwise be lighted. Such indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the **vehicle** so equipped.

(3) Whenever a motor **vehicle** is being operated on a roadway or shoulder adjacent thereto during the times specified in subsection (a), the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and **vehicles** at a safe distance in advance of the **vehicle**, subject to the following requirements and limitations:

a. Whenever a driver of a **vehicle** approaches an oncoming **vehicle** within five hundred (500) feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light or composite beam specified in subsection (c)(1)b. shall be deemed to

avoid glare at all times, regardless of road contour and loading.

b. Whenever the driver of a **vehicle** follows another **vehicle** within two hundred (200) feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in subsection (c)(1)a.

(4) Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted for neighborhood electric **vehicles** in lieu of multiple-beam road-lighting **equipment** specified in this subsection (c) if the single distribution of light complies with the requirements of paragraph (1)b. of this subsection (c).

(d) *Tail lamps and reflectors.*

(1) Every motor **vehicle**, trailer, semitrailer and pole trailer and any other **vehicle** which is being drawn at the end of a train of **vehicles** shall be equipped with at least one (1) tail lamp mounted on the rear, which, when lighted as required in subsection (a), shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear; but, in the case of a train of **vehicles**, only the tail lamp on the rear-most **vehicle** need actually be seen from the distance specified. Furthermore, every such **vehicle**, other than a truck tractor, registered in this state and manufactured or assembled after January 1, 1958, shall be equipped with at least two (2) tail lamps mounted on the rear, on the same level and as widely spaced laterally as practicable, which, when lighted as required in

subsection (a), shall comply with the provisions of this subsection.

(2) Every tail lamp upon every **vehicle** shall be located at a height of not more than seventy-two (72) inches nor less than twenty (20) inches.

(3) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

(4) Every motor **vehicle** operated on and after January 1, 1958, upon a roadway in the city, other than a truck tractor, shall carry on the rear, either as part of a tail lamp or separately, one (1) red reflector meeting the requirements of this section; except that **vehicles** having either a width at any part in excess of eighty (80) inches, an overall length, including the combination of all towed **vehicles**, in excess of thirty (30) feet, or both such width and length, shall be equipped with reflectors as required by the clearance and identification section of the current version of the Colorado "Uniform Safety Code of 1935," as amended.

(5) Every new motor **vehicle** sold and operated on and after January 1, 1958, upon a highway, other than a truck tractor, shall carry on the rear, whether as a part of the tail lamps or separately, two (2) red reflectors; except that every motorcycle and every motor-driven cycle shall carry at least one (1) reflector meeting the requirements of this section; and except that **vehicles** having either a

width at any part in excess of eighty (80) inches, an overall length, including the combination of all towed **vehicles**, in excess of thirty (30) feet, or both such width and length, shall be equipped with reflectors as required by the clearance and identification section of the current version of the Colorado "Uniform Safety Code of 1935," as amended.

(6) Every new motor **vehicle** sold and operated on and after January 1, 1958, upon a highway, other than a truck tractor, shall carry on the rear, whether as a part of the tail lamps or separately, two (2) red reflectors; except that every motorcycle and every motor-driven cycle shall carry at least one (1) reflector meeting the requirements of this section, and **vehicles** of the type mentioned in C.R.S. 1973, 42-4-206, shall be equipped with reflectors as required in those sections applicable thereto.

(7) Every such reflector shall be mounted on the **vehicle** at a height not less than twenty (20) inches nor more than sixty (60) inches, measured as set forth in subsection (a)(3) and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred fifty (350) feet to one hundred (100) feet from such **vehicle** when directly in front of lawful upper beams and head lamps; except that visibility from a greater distance is required by law of reflectors on certain types of **vehicles**.

(8) Paragraph (3) of this subsection 54-70(d) shall not apply to neighborhood electric **vehicles**.

(e) *Stop lamps and turn signals.*

(1) Every motor **vehicle** or motor-drawn **vehicle** shall be equipped with a stop light in good working

order at all times and shall meet the requirements of subsection (f)(1).

(2) No person shall sell or offer for sale or operate on the highways any motor **vehicle** registered in this state and manufactured or assembled after January 1, 1958, unless it is equipped with at least two (2) stop lamps meeting the requirements of subsection (f)(1); except that a motorcycle, motor-driven cycle or truck tractor manufactured or assembled after such date shall be equipped with at least one (1) stop lamp meeting the requirements of subsection (f)(1).

(3) No person shall sell or offer for sale or operate on the highway any motor **vehicle**, trailer or semi-trailer registered in this state and manufactured or assembled after January 1, 1958, and no person shall operate any motor **vehicle**, trailer or semi-trailer on the highways when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor **vehicle** exceeds twenty-four (24) inches, unless it is equipped with electrical turn signals meeting the requirements of subsection (f)(2). This subsection (3) shall not apply to any motorcycle or motor-driven cycle nor to any trailer or semitrailer where the turn signals on the towing **vehicle** are clearly visible to the extent required of such turn signals by subsection (f)(2).

(f) *Signal lamps and devices; additional lighting* ***equipment.***

(1) Any motor **vehicle** may be equipped, and when required under this chapter, shall be equipped with a stop lamp or lamps on the rear of the **vehicle** which shall display a red or amber light, or any shade of color between red and amber,

visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one (1) or more other rear lamps. Such stop lamp or lamps may also be automatically actuated by a mechanical device when the **vehicle** is reducing speed or stopping. If two (2) or more stop lamps are installed on any motor **vehicle**, any device actuating such lamps shall be so designed and installed that all stop lamps are actuated by such device.

(2) Any motor **vehicle** may be equipped, and when required under this chapter, shall be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or to the left. Such lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than one hundred (100) feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight. When actuated, such lamps shall indicate the intended direction of turning by flashing the light showing to the front and rear on the side toward which the turn is made.

(3) No stop lamp or signal lamp shall project a glaring or dazzling light.

(4) Any motor **vehicle** may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.

(5) Any motor **vehicle** may be equipped with not more than one (1) runningboard courtesy lamp on each side thereof, which shall emit a white or amber light without glare.

(6) Any motor **vehicle** may be equipped with not more than two (2) back-up lamps either separately or in combination with other lamps, but no such back-up lamp shall be lighted when the motor **vehicle** is in forward motion.

(7) Any **vehicle** may be equipped with lamps which may be used for the purpose of warning the operators of other **vehicles** of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing and, when so equipped and when the **vehicle** is not in motion and at no other time, may display such warning in addition to any other warning signals required by this chapter. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than five hundred (500) feet under normal atmospheric conditions at night.

(8) Any commercial **vehicle** eighty (80) inches or more in overall width may be equipped with not more than three (3) identification lamps showing to the front which shall emit an amber light without glare and not more than three (3) identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be placed in a row and may be mounted either horizontally or vertically.

(g) *Flashing lights prohibited.* Flashing lights are prohibited on **vehicles** except as a means of signaling right or left turns, and any motor **vehicle** may be equipped with such automatic directional signaling devices, but the same shall not be required; provided, that emergency **vehicles** as provided for in this chapter, are excepted from the provisions of this subsection.

(h) *Lamp or flag on projecting load.* Whenever the load upon any **vehicle** extends to the rear four (4) feet or more beyond the bed or body of such **vehicle**, there shall be displayed at the extreme rear end of the load, at the time specified in subsection (a), a red light or lantern plainly visible from a distance of at least five hundred (500) feet to the sides and rear. The red light or lantern required under this subsection shall be in addition to the red rear light required upon every **vehicle**. At any other time, there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a **vehicle** approaching from the rear.

(i) *Lamps on parked **vehicles**.*

(1) Whenever a **vehicle** is lawfully parked upon a roadway during the hours between sunset and sunrise and in the event there is sufficient light to

reveal any person or object within a distance of one thousand (1,000) feet upon such highway, no lights need be displayed upon such parked **vehicle**.

(2) Whenever a **vehicle** is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between sunset and sunrise and there is not sufficient light to reveal any person or object within a distance of one thousand (1,000) feet upon such highway, such **vehicle** so parked or stopped shall be equipped with one (1) or more operating lamps meeting the following requirements: At least one (1) lamp shall display a white or amber light visible from a distance of five hundred (500) feet to the front of the **vehicle**, and the same lamp or at least one (1) other lamp shall display a red light visible from a distance of five hundred (500) feet to the rear of the **vehicle**, and the location of the lamp or lamps shall always be such that at least one (1) lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the **vehicle** which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

(3) Any lighted headlamps upon a parked **vehicle** shall be depressed or dimmed.

(j) *Spot lamps and auxiliary lamps.*

(1) Any motor **vehicle** may be equipped with not more than two (2) spot lamps, and every lighted spot lamp shall be so aimed and used upon approaching another **vehicle** that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the **vehicle** nor more than one hundred (100) **feet** ahead of the **vehicle**.

(2) Any motor **vehicle** may be equipped with not more than two (2) fog lamps mounted on the front at a height not less than twelve (12) inches nor more than thirty (30) inches above the level surface upon which the **vehicle** stands and so aimed that, when the **vehicle** is not loaded, none of the high-intensity portion of the light to the left of the center of the **vehicle** shall, at a distance of twenty-five (25) feet ahead, project higher than a level of four (4) inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the requirements of this subsection (2) may be used with lower head-lamp beams as specified in subsection (c)(1)b.

(3) Any motor **vehicle** may be equipped with not more than two (2) auxiliary passing lamps mounted on the front at a height not less than twenty (20) inches nor more than forty-two (42) inches above the level surface upon which the **vehicle** stands. The provisions of subsection (c) shall apply to any combination of head lamps and auxiliary passing lamps.

(4) Any motor **vehicle** may be equipped with not more than two (2) auxiliary driving lamps mounted on the front at a height not less than sixteen (16) inches nor more than forty-two (42) inches above the level surface upon which the **vehicle** stands. The provisions of subsection (c) shall apply to any combination of head lamps and auxiliary driving lamps.